

2022 LiveLaw (Ker) 104

IN THE HIGH COURT OF KERALA AT ERNAKULAM

S. MANIKUMAR (C.J.) & SHAJI P.CHALY, J.
WEDNESDAY, THE 2ND DAY OF MARCH 2022
W.A.Nos. 212, 214 & 218 of 2022

Writ appeal against single bench judgment that upheld revocation of permission granted to M/s. Madhyamam Broadcasting Limited for uplinking and downlinking 'Media One' channel - Dismissed - There are certain serious adverse reports by the Intelligence Bureau against M/s. Madhyamam Broadcasting Limited and its Managing Director - Though the nature, impact, gravity and depth of the issue is not discernible from the files, there are clear and significant indications impacting the public order and security of the State.

Constitution of India, 1950 - Article 19 (3) and 19 (4) - The restrictions contained under Articles 19(3) and (4) of Constitution of India dealing with public order include the security of the State. (Para 64)

Cable Television Networks (Regulation) Act, 1995 - Intention of Legislature - Significance shall be given to the interests of the nation - The security of the State and the public order are very vital for the fair and smooth functioning of the nation and therefore, significance and importance shall be provided to the interests of the citizens of this country, rather than other aspects. (Para 66, 67, 70)

Cable Television Networks (Regulation) Act, 1995 - Policy guidelines for uploading/downlinking of Television channels - In the matter of grant of permission and renewal for uplinking and downlinking, by the ministry of broadcasting, the Ministry of Home affairs is an inseparable link . (Para 69)

Cable Television Networks (Regulation) Act, 1995 - Normally and ordinarily, an operator who has received registration and permission for uplinking and downlinking news is entitled for automatic renewal; but, when there are other reasons adverse to the interests of the nation, the Government is vested with powers to revoke the same. (Para 69)

Cable Television Networks (Regulation) Act, 1995 - Section 19,20 - Sections 19 and 20 of Act 1995 enables the Union Government to do the required in order to protect the larger interest of the nation and the citizens, rather than protecting the interest of a telecasting company - The eminent domain of the Government as regards national interest will always remain with the Government itself irrespective of the contents of the guidelines issued for the purpose to regulate and control the network operations of the registered establishments. (Para 68)

Constitution of India, 1950 - Article 19 - Freedom of Press - Normally and ordinarily the Government cannot interfere or tinker with the freedom enjoyed by the Press, since the principles of democracy and rule of law prevailing in the country is

largely dependent upon the freedom of speech enjoyed by the press and the citizens through the visual and print medias, which constitutes the largest network system to disseminate the news to the citizens of this country and also abroad 0 It is also true that through the media and the press, citizens are able to understand the progress of the nation, nature and manner of functioning of the Government and also to evaluate those aspects to formulate their own ideas and policies, to respond, to deliberate and especially to form opinion exercise their franchise appropriately and fruitfully at the time of elections. (Para 61-62)

WA NO. 212 OF 2022

AGAINST THE JUDGMENT DATED 08.02.2022 IN WP(C) 3670/2022 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS IN THE W.P.(C):

1 KERALA UNION OF WORKING JOURNALISTS, PUTHENCHANDAYIL, M.G.ROAD, THIRUVANANTHAPURAM-695 001, REPRESENTED BY ITS GENERAL SECRETARY

2 SHABEENA K.M @ SHABNA ZIAD, SECRETARY, KERALA UNION OF WORKING JOURNALISTS, PUTHENCHANDAYIL, M.G.ROAD, THIRUVANANTHAPURAM-695 001, & SPECIAL CORRESPONDENCE OF MEDIA ONE KOCHI.

3 SANOJ M.P, STATE COMMITTEE MEMBER, KERALA UNION OF WORKING JOURNALISTS PUTHENCHANDAYIL, M.G.ROAD, THIRUVANANTHAPURAM-695 001, & SENIOR CAMERA PERSON LEVEL-1 OF MEDIA ONE KOCHI.

BY ADVS. SRI. DUSHYANT DAVE (SR.) K.JAJU BABU (SR.) M.U.VIJAYALAKSHMI BRIJESH MOHAN SACHIN RAMESH SIDHARTH O.

RESPONDENTS/RESPONDENTS IN W.P.(C):

1 UNION OF INDIA REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF INFORMATION AND BROADCASTING, A-WING, SASTHRI BHAVAN, NEW DELHI-110 001.

2 THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, CENTRAL SECRETARIAT, NORTH BLOCK, NEW DELHI-110 001

3 MADHYAMAM BROADCASTING LIMITED, MEDIA ONE HEADQUARTERS, 15/594C, VELLIPPARAMBA P.O.KOZHICODE-673 008, REPRESENTED BY ITS MANAGING DIRECTOR

BY ADV. SRI. AMAN LEKHI, ADDL. SOLICITOR GENERAL SRI. MANU S., ASG OF INDIA SRI. JAISHANKAR V. NAIR, CGC SRI. SUVIN R. MENON, CGC SRI. DAYASINDHU SREEHARI, CGC

WA NO. 214 OF 2022

AGAINST THE JUDGMENT DATED 08.02.2022 IN WP(C) 3663/2022 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS IN THE W.P.(C):

1 PRAMOD RAMAN EDITOR, MEDIA ONE, MEDIA ONE HEADQUARTERS, 15/594C, VELLIPPARAMBA P.O, KOZHICODE – 673 008.

2 SHARAFUDHEEN K.P SENIOR WEB DESIGNER, MEDIA ONE, MEDIA ONE HEADQUARTERS, 15/594C, VELLIPPARAMBA P.O, KOZHICODE – 673 008.

3 BIJU K.K. SENIOR CAMERA PERSON, MEDIA ONE, MEDIA ONE HEADQUARTERS, 15/594C, VELLIPPARAMBA P.O, KOZHICODE – 673 008.

BY ADVS. SRI. DUSHYANT DAVE (SR) K.JAJU BABU (SR.) M.U.VIJAYALAKSHMI BRIJESH MOHAN SACHIN RAMESH

RESPONDENTS/RESPONDENTS IN W.P.(C):

1 UNION OF INDIA REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF INFORMATION AND BROADCASTING, A WING, SASTHRI BHAVAN, NEW DELHI – 110 001.

2 THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, CENTRAL SECRETARIAT, NORTH BLOCK, NEW DELHI – 110 001.

3 MADHYAMAM BROADCASTING LIMITED, MEDIA ONE HEADQUARTERS, 15/594C, VELLIPARAMBA P.O, KOZHIKODE – 673 008. REPRESENTED BY ITS MANAGING DIRECTOR.

R1 & R2 BY ADV. SRI. AMAN LEKHI, ADDL. SOLICITOR GENERAL SRI. MANU S., ASG OF INDIA BY SRI. JAISHANKAR V. NAIR, CGC SRI. SUVIN R. MENON, CGC SRI. DAYASINDU SREEHARI, CGC

WA NO. 218 OF 2022

JUDGMENT DATED 08.02.2022 IN WP(C) 3265/2022 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MADHYAMAM BROADCASTING LIMITED, MEDIA ONE HEADQUARTERS, 15/594 C, VELLIPARAMBA P.O, KOZHIKODE DISTRICT, PIN 673 008, REPRESENTED BY ITS MANAGING DIRECTOR, YASEEN ASHARAF KALLINGAL, S/O. KALLINGAL ABU, AGED 70 YEARS, RESIDING AT KALLINGAL HOUSE, KARAD ROAD, FAROOK COLLEGE P.O, VAZHAYOOR, MALAPPURAM DISTRICT.

BY ADV K.RAKESH

RESPONDENTS/RESPONDENTS:- 1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY BY ITS SECRETARY, GOVERNMENT OF INDIA, MINISTRY OF INFORMATION AND BROADCASTING 'A' WING, SHASTRI BHAVAN, NEW DELHI 110 001.

2 THE SECRETARY TO THE GOVERNMENT MINISTRY OF HOME AFFAIRS, SHASTRI BHAVAN, NEW DELHI 110 001.

3 M/S. PLANETCAST MEDIA SERVICES LIMITED, C- 34, SECTOR 62, ELECTRONIC CITY, NOIDA-201 307, UTTAR PRADESH, REPRESENTED BY ITS AUTHORISED OFFICER.

BY ADV. SRI. AMAN LEKHI, ADDL. SOLICITOR GENERAL SRI. MANU S., ASG OF INDIA SRI. JAISHANKAR V. NAIR, CGC SRI. SUVIN R. MENON, CGC SRI. DAYASINDHU SREEHARI, CGC

JUDGMENT

SHAJI P. CHALY, J.

The captioned writ appeals are filed by the writ petitioners challenging the common judgment of the writ court in W.P.(C) Nos. 3670, 3663 and 3265 of 2022 dated 08.02.2022.

2. W.A. No. 212 of 2022 is filed by the Kerala Union of Working Journalists and others. W.A.No. 214 of 2022 is filed by the employees of the news channel by name 'Media One' and W.A. No. 218 of 2022 is filed by M/s. Madhyamam Broadcasting Limited, which is managing and controlling 'Media One', a news and current affairs channel.

3. The subject issue raised in the appeals is one and the same in regard to an order passed by the Ministry of Information and Broadcasting, Government of India dated 31.01.2022, whereby the permission granted to M/s. Madhyamam Broadcasting Limited for uplinking and downlinking a 'News and Current Affairs TV Channel' namely 'Media One' is revoked with immediate effect and accordingly, the name of the said channel is removed from the list of permitted channels. It was, thus, challenging the legality and correctness of the said order, the writ petitions were filed.

4. For the purpose of disposal of the appeals, we are relying upon the pleadings and documents in W.A. No. 218 of 2022; however, in the course of discussion, if the pleadings and documents in the other appeals are relied upon, it will be mentioned accordingly.

5. The basic facts for the disposal of the appeals are as follows: M/s. Madhyamam Broadcasting Limited is a company incorporated under the Companies Act, which owns 'Media One', a TV Channel in the field of broadcasting news and current affairs. The first respondent— Union of India had granted permission enabling M/s. Madhyamam Broadcasting Limited to uplink and downlink the TV programmes, and the permission was valid upto 029.09.2021, evident from the communications dated 30.09.2011, 30.09.2011 and 11.07.2019 produced as Exts.P1, P1(a) and P1(b) respectively in W.A. No. 214 of 2022. Ext. P1 is the permission granted to the Managing Director of M/s. Madhyamam Broadcasting Limited, Calicut, Kerala, to uplink news and current affairs through 'Media One' from India for a period of 10 years. Ext. P1(a) is the permission given to the referred company to downlink the news and the current affairs through 'Media One' in India for a period of 5 years. Ext. P1(b) is the renewal of permission granted to M/s. Madhyamam Broadcasting Limited for downlinking for a further period of 5 years from 30.09.2016 to 29.09.2021 i.e., making it co-terminus with uplinking permission.

6. It seems, an application was filed by M/s. Madhyamam Broadcasting Limited, to renew the uplinking and downlinking permission for a period of 10 years, on 03.05.2021, since the permissions were due to expire on 29.09.2021. Anyhow, the application was not considered before the expiry of the permissions. However, the appellant company was apparently permitted to continue its activities. While so, on 05.01.2022, the Ministry of Information and Broadcasting, Government of India, issued Ext. P1, show cause notice to M/s. Madhyamam Broadcasting Limited pointing out that even though the company, as per letter dated 03.05.2021, applied for renewal of permission, Ministry of Home Affairs informed that the security clearance has been denied in the past to the proposals of the company and the security clearance may be considered as denied in the present case also.

7. Anyhow, it is stated therein that, due to the denial of the security clearance, the company ceased to fulfil the eligibility requirement for renewal of permission for uplinking and downlinking of TV channels, and therefore, M/s. Madhyamam Broadcasting Limited was called upon to show cause as to why the permission granted to it for uplinking and downlinking should not be revoked or cancelled with immediate effect.

8. The case projected by M/s. Madhyamam Broadcasting Limited is that, Ext. P2 reply dated 18.01.2022 was submitted explaining the facts and circumstances and also pointing out that the allegations against 'Media One' TV Channel that the security clearance had been denied to it in the past, is not correct. It was further stated that the show cause notice itself is vague, inasmuch as it does not disclose the reason for denial of the security clearance to 'Media One' TV channel. Other contentions were also raised, thus, refuting the allegations contained in the show cause notice.

9. In the reply, it is also stated that the attempt of the respondent is violative of Articles 14 and 19(1)(a) of the Constitution of India. Anyhow, it is submitted that without taking into account any of the submissions made in the reply, the impugned order dated 31.01.2022 was passed. Being aggrieved, the writ petitions were filed.

10. The learned single Judge, after assimilating the facts and circumstances of the case, has held as follows:

36. When these writ petitions came up for hearing, the learned ASGI was required to produce the files relating to the application submitted by the petitioner in W.P.(C) No.3265/2022 for renewal of licence. The MHA made available the relevant files. I have perused the files. It emerges from the files that the MHA had called for inputs from intelligence agencies. The files contained paginated documents, conclusions of the Committee of Officers and other responsible officers of the MHA and the Guidelines for assessment of proposals received in the MHA for National Security Clearances. National Security covers preservation of nations unity, territorial integrity, sovereignty and protection of life and liberty of individuals. The Information and Broadcasting is a sensitive sector.

37. From the files produced before this Court, it is discernible that the Committee of Officers took note of the inputs given by the intelligence agencies as regards the petitioner- Company, and found that the inputs are of a serious nature and falls under the security rating parameters. In the circumstances, the Committee of Officers advised not to renew the licence. This Court finds that the recommendations of the Committee of Officers as finally accepted by the MHA, are justified by supporting materials. In the facts and circumstances of the case, this Court is not inclined to interfere with the denial of renewal of licence to the petitioner- Company in W.P.(C) No.3265/2022. The writ petitions fail and they are accordingly dismissed.”

11. The Union of India and the Secretary to Government, Ministry of Home Affairs, New Delhi, respondent Nos. 1 and 2, have filed a joint statement basically refuting the allegations and the claims raised in the writ petition and *inter alia* submitting that the policy guidelines of 2005 were amended by the Ministry of Information and Broadcasting, keeping in view the fast evolving electronic media and thus, the consolidated guidelines were notified on 05.12.2011 in supersession of all previous guidelines produced as Annexures R1(a) and R1(b). The permission granted for downlinking and uplinking to M/s. Madhyamam Broadcasting Limited through 'Media One' TV channel is admitted. However, it is stated that the Ministry of Home Affairs, as per OM dated 27.01.2016, denied the security clearance to both the proposals ie., the permission of additional TV channels namely 'Media One Life' and 'Media One Global' and also the appointment of two Directors namely, Musliyarakath Mehaboob and Rahmathunnissa Abdul Razack of the company.

12. It also pointed out that the Ministry of Information and Broadcasting has issued a show cause notice dated 12.02.2016 to the company to clarify as to why the permission granted to the company should not be revoked, evident from Ext. R1(e). it seems, the company submitted its reply, wherein it is mentioned that as the show cause notice was issued on the basis of the denial of security clearance by the Ministry of Information and Broadcasting, they are unaware of the grounds of denial of security clearance, since the same was never communicated to it, nor it was a party in that proceedings.

13. According to the respondents, in view of the denial of the security clearance, permission for uplinking and downlinking of the TV Channel namely 'Media One Life' was cancelled on 11.09.2019 evident from Annexure R1(f).

14. The application submitted by the company seeking renewal of permission of TV Channel 'Media One' was submitted by the company as per application dated 03.05.2021 for a further period of 10 years. It is also submitted that the application for renewal was forwarded by the Ministry of Information and Broadcasting to the Ministry of Home Affairs as per Annexure R1(g) dated 29.11.2021. It is further submitted that by letter dated 29.12.2021, the Ministry of Home Affairs has denied security clearance to the company in respect of instant proposal i.e., the renewal of uplinking and downlinking permission for a further period of 10 years with respect to 'Media One' and it was thereupon that the Ministry has issued a show cause notice dated 05.01.2022 to the company.

15. Anyhow, it is admitted that the company, by e-mail dated 19.01.2022, replied to the show cause notice basically stating that they are unaware of the grounds of renewal of security clearance, since the same was not communicated to them and they were never granted an opportunity of being heard while denying the clearance.

16. That apart, it is pointed out that on similar allegation, the Ministry had earlier issued a show cause notice to the company on 12.02.2016, but subsequently renewed the licence by letter dated 11.07.2019 and therefore, it requested the Ministry to withdraw the show cause notice dated 05.01.2022 and grant them renewal of licence for 'Media One' TV Channel.

17. The further case of the respondents is that based on the reply, an application for renewal was considered and the permission was denied and therefore, the denial of permission was in accordance with law. The judgments in ***Ex-Armymen's Protection Services P. Ltd. v. Union of India and others*** [AIR 2014 SC 1376] and ***Digi Cable Network (India) Pvt. Ltd. v. Union of India and others*** [AIR 2019 SC 455] were also relied upon to contend and canvass that when national security is involved, a party cannot insist for the strict observance of the principles of natural justice and in such cases, it is the duty of the court to read into and provide for statutory exclusion. It is further stated that the Ministry of Home Affairs has informed that the denial of security clearance in the case on hand is based on intelligence inputs, which are sensitive and secret in nature and therefore, as a matter of policy and in the interest of the national security, the Ministry of Home Affairs does not disclose the reasons for the denial.

18. A reply affidavit is filed by the petitioner reiterating the stand adopted in the writ petition and also contending that there was no action initiated against the company at any point of time, while it was enjoying the licence for the news channel 'Media One TV'. Therefore, according to the writ petitioner, the entire action of the respondents are arbitrary and violative of the principles of natural justice and the fundamental rights guaranteed under Articles 14, 19(1) and 21 of the Constitution of India.

19. We have heard the learned Senior Counsel appearing for the appellants Sri. Dushyanth Dave and Sri. Jaju Babu and the learned Additional Solicitor General of India Sri. Aman Lekhi, and perused the pleadings and materials on record.

20. The fundamental contention advanced by the learned counsel for the appellants is that for the renewal of the existing permission, clear cut procedures are prescribed as per the policy guidelines for uplinking of television channels from India dated 05.12.2011 and so also, there are clear policy guidelines for downlinking of Television channels dated 05.12.2011. According to the learned Senior Counsel, clause 10 of policy guidelines for uplinking specifies the clear parameters for renewal of the permission, however the Union Government has not adhered to the guidelines set up by the Government for renewal of the existing permissions.

21. It is also pointed out that as per the guidelines for downlinking, clear modalities are provided for the renewal of the existing permissions as per clause 9, but none of them are taken into account, while processing the application of the appellant company. It is further submitted that there was no occasion to take any action against the appellant company for violation of the permission granted in accordance with the Guidelines for uplinking and downlinking and therefore, the Union Government, with the intention to deny the permission, projected national security as a reason; whereas, neither in the show cause notice nor in the order, it is mentioned that there is any threat to the national security consequent to the operation of the channel by the company.

22. It is further pointed out that the only aspect that is referred to in the show cause notice and in the order is that the Ministry of Home Affairs has informed that the security clearance has been denied in the past to the proposals of the company and security clearance may be considered as a denial to the present case also. Therefore, it is contended by the learned Senior Counsel that nowhere in the show cause notice or in the impugned order, it is pointed out that there was any attempt on the part of the company to interfere with the national security and the sole basis of the show cause notice and the denial of permission is on account of the security clearance.

23. It is further submitted by the learned Senior Counsel that when a clear cut procedure for renewal of existing permissions is prescribed, the Union Government was duty bound to follow the same and if at all there was any action on the part of the appellant company, it should have been specifically pointed out, especially due to the fact that in the show cause notice there was no mention about the conduct of the appellant company to interfere with the national security of the country.

24. The learned Senior Counsel has also submitted that the company is conducting the news channel by employing about 350 people and therefore, the company may be permitted to continue and otherwise, it will cause serious prejudice and inconvenience to the company and the public at large. That apart, it is also contended that the freedom to carry own business with reasonable restrictions is a fundamental right of the company and therefore, any action on the part of the respondents to interfere with the fundamental rights, freedom of speech and expression and others is a serious matter

that would have to be taken into account by this Court while considering the illegal and arbitrary action of the respondents.

25. On the other hand, the learned Additional Solicitor General has advanced arguments basically supporting the show cause notice, the impugned order and the findings rendered by the learned single Judge on the basis of the files produced before the learned single Judge and the observations made in respect of the same.

26. The paramount contention advanced by the learned Senior Counsel appearing for the appellants is that since the grant of permission for uplinking and downlinking of television channels is guided by the guidelines issued by the Ministry of Information and Broadcasting, Government of India dated 05.12.2011, the concerned authority is not entitled to traverse out of the same and arrive its own conclusions, without denoting the reasons for the proposal for not renewing the permission and thus providing a full opportunity of participation to the appellant company in the proceedings. Insofar as the uplinking of television channels from India is concerned, the procedure for obtaining permission initially is guided by clause 9 of the Guidelines.

27. Therefore, it is the contention of the learned Additional Solicitor General that when serious issues are involved with respect to the security aspects, there is no requirement of mentioning the same in the show cause notice or in the impugned order. Other contentions are also advanced to canvass the proposition that the appellant company is not entitled to challenge the show cause notice as well as the impugned order on the grounds of violation of principles of natural justice, arbitrariness, the freedom of speech and expression, and life and liberty when the issue with respect to the security aspect of the country is involved.

28. Clause 9.1 deals with submitting an application for permission. Clause 9.2 specifies that on the basis of the information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs and for clearance of satellite use to the Department of Space, wherever required. Clause 9.3 makes it clear that as soon as those clearances are received, the applicant would be asked to furnish a demand draft for an amount equal to the permission fee and Performance Bank Guarantee as applicable.

29. Clause 9.4 deals with grant of permission which states that the company would be issued a formal permission to enable it to obtain requisite license/clearances from the WPC Wing, Ministry of Communications & IT or approach a teleport service provider in case of TV channels/uplinking by a Indian news agency. Other modalities are also prescribed under the guidelines in order to manage and tackle various situations.

30. It is also an admitted fact that the permission for uplinking was granted to M/s. Madhyamam Broadcasting Limited in the year 2011, which was due to expire on 29.09.2021. In fact, permission for down linking was given for a period of 5 years. However, later, it was extended in the year 2019 for a period of 5 years from the date of expiry i.e., 30.09.2016 co-terminus with the permission for uplinking, which was also accordingly due to expire on 29.09.2021.

31. Insofar as the policy guidelines for downlinking of television channels is concerned, clause 8 deals with procedure for grant of permission of channels. It is almost akin to the grant of permission for uplinking of TV channels. Clause 10 of the guidelines for uplinking deals with the renewal of existing permissions, which reads thus:

[10. RENEWAL OF EXISTING PERMISSIONS

10.1. The existing permission holders as on the date of issuance of the amended Guidelines on 05.12.2011 will continue to be governed by the terms and conditions of permission as they existed prior to the issuance of amendments on 05.12.2011 till the expiry of such permission.

10.2 Renewal of permission will be considered for a period of 10 years at a time, subject to the condition that the channel should not have been found guilty of violating the terms and conditions of permission including violations of the programme and advertisement code on five occasions or more. What would constitute a violation would be determined in consultation with the established selfregulating mechanisms.

10.3 The renewal will also be subject to the permission holder's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.

10.4 At the time of considering the renewal of permission of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.

32. Similarly, clause 9 of guidelines for downlinking deals with renewal of existing permissions/registration and it reads thus:

9. [RENEWAL OF EXISTING PERMISSIONS / REGISTRATION

9.1. The existing permission holders as on the date of issuance of the amended Guidelines on 05.12.2011 will continue to be governed by the terms and conditions of permission as they existed prior to the issuance of amendments on 05.12.2011 till the expiry of such permission.

9.2. Renewal of permission/registration will be considered for a period of 10 years at a time, subject to the condition that the company/ channel should not have been found guilty of violating the terms and conditions of permission including violations of the programme and advertisement code on five occasions or more. What would constitute a violation would be determined in consultation with the established self-regulating mechanisms.

9.3. The renewal will also be subject to the permission/ registration holder's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.

9.4. At the time of considering the renewal of permission/ registration of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.

33. Basically, the issue that is to be considered is with respect to the clauses 9 and 10 extracted above in regard to the guidelines for renewal for uplinking and downlinking

of TV channels. On an analysis of the said provisions, it is clear that the existing permission holders as on the date of issuance of the amended guidelines on 05.12.2011 will continue to be governed by the terms and conditions of permission as they existed prior to the issue of amendments on 05.12.2011 till the expiry of such permission. Therefore, it is categoric and clear that the appellants denied the permission for renewal as per the amended guidelines till its expiry.

34. Clauses 10.2 and 9.2 respectively of the uplinking and downlinking permissions make it clear that the renewal of permission/registration will be considered for a period of 10 years at a time, subject to the conditions that the company/channel should not have been found guilty of violating the terms and conditions of permission, including the violations of the programmes and advertisement code on five occasions or more, and that what would constitute a violation would be determined in consultation with the established self-regulating mechanisms.

35. Likewise, clauses 10.3 and 9.3 respectively of the guidelines makes a stipulation that renewal will also be subject to the permission/registration holder's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time. Whatever that be, clauses 10.4 and 9.4 respectively specify that at the time of considering the renewal of permission/registration of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.

36. Taking into account the aforesaid provisions of the guidelines, extensive arguments are advanced by the learned Senior Counsel for the appellants that when the renewal of existing terms/registrations as per the respective guidelines for uplinking and downlinking, the authority granting permission/registration is duty bound to confine its parameters of consideration to the specific provisions made under the guidelines.

37. That apart, it is submitted that if and when any deviation is made, in regard to the security clearance as is envisaged for the purpose of granting permission, a proper show cause notice ought to have been provided, since the renewal of existing permission/registration under the guidelines makes it clear that in order to decline permission, the company or channel should have been found guilty of violating the terms and conditions of permission, including violations of the programme and advertisement code on five occasions or more.

38. Relying upon clauses 10.4 and 9.2, learned Senior Counsel for the appellants submitted that no action was initiated against the company or the TV channel in order to decline renewal of permission/registration for a period of 10 years.

39. The learned Senior Counsel for the appellant invited our attention to clause 8 of the guidelines for uplinking and clause 6 of the guidelines for downlinking dealing with offences and penalties which are identical, and it reads thus:

“6. OFFENCES AND PENALTIES

6.1. In the event of a channel found to have been/being used for transmitting any objectionable unauthorized content, messages, or communication inconsistent with public interest or national security or failing to comply with the directions as per Para 5.8 or Para 5.16, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws. Further, the registration of the channel shall be revoked and the channel shall be disqualified from being considered for fresh registration for a period of five years.

6.2. Subject to the provisions contained in Para 6.1 of these guidelines, in the event of a permission holder and/or channel violating any of the terms and conditions of permission, or any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties: -

6.2.1. In the event of first violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 30 days.

6.2.2. In the event of second violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 90 days.

6.2.3. In the event of third violation, revocation of the permission of the company and/or registration of the channel and prohibition of broadcast up to the remaining period of permission.

6.2.4. In the event of failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and /or registration and prohibition to broadcast for the remaining period of the permission and disqualification to hold any fresh permission and/or registration in future for a period of five years.

6.2.5. In the event of suspension of permission as mentioned in Para 5.8, 5.16 or 6.2, the permission holder will continue to discharge its obligations under the Grant of Permission Agreement including the payment of fee.

6.2.6. In the event of revocation of permission and /or registration the fees paid will be forfeited.

6.2.7. All the penalties mentioned above shall be imposed only after giving a written notice to the permission holder.”

40. On an analysis of the said provisions, it is quite clear and evident that a clear parameter is fixed in order to tackle the situation of violation and the consequential action to be taken. Therefore, according to the appellants, no such actions as is contemplated is initiated against the appellant company or the TV channel and therefore, the respondents had no other alternative than to renew the permission/registration taking into account the parameters fixed as per the relevant provisions of the guidelines.

41. Extensive arguments are advanced relying upon various judgments of the Apex Court that the action of the respondents in declining permission without assigning any reasons is clearly violative of Articles 14, 19(1)(a), 19(1)(g) and 21 of the Constitution of India. That apart, it is contended that there are 350 employees working in the company and therefore, if the permission/registration is not renewed, it would seriously affect the employees of the company also.

42. On the other hand, the learned Additional Solicitor General of India, Sri. Aman Lekhi, submitted that clauses 10.2 and 9.2 respectively of the guidelines would have to be read along with 10.4 and 9.4 whereby even at the time of renewing the permission/registration, the authority is vested with ample powers to take into consideration other terms and conditions as per the modified terms and conditions of the permission. Therefore, according to the learned Additional Solicitor General, even at the time of renewal of permission/registration, the authority is entitled, as of right, to take into consideration the procedure for obtaining permission and therefore, the arguments advanced by the learned counsel for the appellants that only if the terms and conditions are violated, then alone the permission/registration can be declined, cannot be sustained under law.

43. That apart, it is pointed out that going by the provisions of the guidelines, it is clear that whenever there is an issue with respect to the security clearance, that would have to be taken into consideration for the purpose of renewal. It is also contended that the principles of natural justice would not come to the rescue of the appellants when the Ministry of Home Affairs discloses any adverse situations remaining against the appellant company in regard to the non-grant of security clearance.

44. Therefore, the submission made by the learned Additional Solicitor General is that the learned single Judge has gone through the original files of the Ministry of Home Affairs and it was on finding serious adverse situations against the company and the channel the reliefs were declined.

45. It is also submitted that whenever there is an issue with respect to the security of the nation, it need not be disclosed in the show cause notice or in the order and that is why the files were produced before the learned single Judge to ascertain the aspects relied upon by the respondents while declining permission/registration.

46. Having gone through the judgment of the learned single Judge, we also felt that it was basically relying upon the files of the Ministry of Home Affairs that the learned single Judge has arrived at the conclusion that the inputs available in the files are of serious nature and falls under the security ratio parameters and therefore, there is no illegality, arbitrariness or other legal infirmities so as to interfere with the declining of permission/registration. Therefore, we also directed the files to be placed before us in a sealed cover.

47. The learned Additional Solicitor General has also invited our attention to the provisions of the Cable Television Networks (Regulation) Act, 1995 ('Act, 1995' for short). Section 3 of Act, 1995 stipulates that no person shall operate a cable television network, unless he is registered as a cable operator under the Act. Relying upon sub-Section (2) of Section 4, he has submitted that the cable operator shall fulfil such eligibility criteria and conditions as may be prescribed and different eligibility criteria may be prescribed for different categories of cable operators, which provisions, according to the learned Additional Solicitor General, would be applied to the renewal of permission/registration.

48. So also, our attention was invited to sub-Sections (6) and (7) of Section 4 of Act, 1995. Sub-Section (6) specifies that without prejudice to the compliance of eligibility criteria for registration of cable operators, the Central Government may prescribe, having regard to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, foreign relation or contempt of court, defamation or incitement to an offence, such terms and conditions of registration, including additional criteria or conditions to be fulfilled by the cable operator. Therefore, it is submitted that it is not only the security and sovereignty of the country that is dealt with under the Act, 1995, but the public order is also an aspect to be considered while granting permission/registration as well as renewal of permission/registration.

49. Sub-Section (7) deals with the power of the central Government to suspend or revoke the registration granted under sub- Section (5), if the cable operator violates one or more of the terms and conditions of such registration. Therefore, according to the learned Additional Solicitor General, it is based on the provisions of the Act, 1995, the guidelines are prescribed by the Government of India for the uplinking and downlinking of the television channels.

50. The learned Additional Solicitor General has also invited our attention to Sections 19 and 20 of Act, 1995 and they read thus:

“19. Power to prohibit transmission of certain programmes in public interest.—Where [any authorised officer], thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or re-transmitting [any programme or channel if, it is not in conformity with the prescribed programme code referred to in section 5 and advertisement code referred to in section 6 or if it is] likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquility.

20. Power to prohibit operation of cable television network in public interest.— [1] Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf.

[(2) Where the Central Government thinks it necessary or expedient so to do in the interest of the— (i) sovereignty or integrity of India; or (ii) security of India; or (iii) friendly relations of India with any foreign State; or (iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission or retransmission of any channel or programme.

(3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit the transmission or re-transmission of such programme].”

51. Relying upon the said provisions, it is submitted that when a power is conferred on the Union Government to prohibit any cable operators from transmitting or retransmitting any programme or channel, if it is not in conformity with the prescribed

programme code referred to in Section 5 and advertisement code referred to in Section 6 or if it is likely to permit on the grounds of religion, race, religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquility, the Government is vested with absolute and ample powers to interdict not only any programme but the channel as such.

52. The learned Additional Solicitor General has also invited our attention to Ext. R1(c) letter dated 30.09.2011 issued by the Ministry of Information and Broadcasting, wherein the following security related conditions are also incorporated:

SECURITY RELATED CONDITIONS

I. The Licensing Authority shall be empowered to Impose such restrictions as may be necessary as and when required.

II. The Licensing Authority shall have the power to revoke the licence on grounds of national security and public order.

III. The Licensing Authority shall have the power to prohibit transmission of programmes considered to be prejudicial to friendly relations with foreign Governments, public order, security of state, communal harmony, etc.

IV. License should provide access facilities of all equipment and records/ system to the Licensing Authority or its representative.

V. Licence should make available detailed information about the equipment and its location.

VI. Licensing Authority shall be legally competent to take over the stations on the occurrence of public emergency or in the interest of public safety/order.

VII. Monitoring stations should be set up So as to facilitate prompt intervention for deterrent action against violations of technical parameters and provision laid down in the legislation and licensing agreements VIII. The Licensing Authority shall be empowered to modify the conditions laid down or incorporate any conditions as and when necessary in the interest of national security.

IX. The applicant would make available to the Licensing Authority the detailed technical information about the equipment to be used.

53. In fact, in compliance with the directions issued by this Court, the Ministry of Home Affairs, Government of India, has produced two files relating to M/s. Madhyamam Broadcasting Limited, one in relation to 'Media One Life' and 'Media One Global' and the other relating to 'Media One' TV'.

54. We have gone through the files extensively and insofar as the files relating to uplinking/downlinking of 'Media One Life' and 'Media One Global' are concerned, certain aspects relating to the security of the State are mentioned to the effect that M/s. Madhyamam Broadcasting Limited has some linkages with certain undesirable forces, which is stated to be a security threat. It is in spite of the same that the uplinking and downlinking was permitted to 'Media One' TV.

55. Likewise, the application filed seeking permission for the renewal of the uplinking and downlinking of "Media one TV" was considered in the year 2021 and wherein also, we find that there are certain serious adverse reports by the Intelligence Bureau against M/s. Madhyamam Broadcasting Limited and its Managing Director. It is true that the nature, impact, gravity and depth of the issue is not discernible from the files. But, at the same time, there are clear and significant indications impacting the public order and security of the State. Since it is a confidential and sensitive file maintained by the Ministry of Home Affairs, Union of India, we are not expressing anything further in the interest of national security, public order and other aspects concerning the administration of the nation.

56. It is true that, the learned Senior Counsel Sri. Dushyanth Dave has invited our attention to the judgments of the Apex Court in **Romesh Thapper v. The State of Madras** [AIR 1950 SC 124], **Sakal Papers (P) Ltd. And Ors. v. Union of India** [AIR 1962 SC 305], **Bennet Coleman and Co. and Ors. v. Union of India and Ors.** [AIR 1973 SC 106], **Maneka Gandhi v. Union of India** [AIR 1978 SC 597], **Indian Express Newspapers (Bombay) Private Ltd. And Ors. v. Union of India** [AIR 1986 SC 515], **Justice K. S. Puttaswamy and Ors. v. Union of India and Ors.** [(2019) 1 SCC 1], **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal** [(2020) 5 SCC 481], **Anuradha Bhasin v. Union of India** [(2020) 3 SCC 637] and **Manohar Lal Sharma v. Union of India and others** [AIR 2021 SC 5396] to canvass the proposition that the freedom of Press is on a very high pedestal in order to disseminate the news for the public. According to the learned Senior Counsel, circulation of the news is part of a right to freedom of speech and there is an affirmative obligation on the part of the Government to permit the Broadcasting Companies to operate and make available the news which the people are entitled to understand the situation prevailing in the country.

57. Learned Senior Counsel Sri. Dushyanth Dave also pointed out that merely by using the high sounding word 'national security', the Union Government is not entitled to suppress the freedom of speech and expression guaranteed under Article 19(2) of the Constitution of India. So also, the learned Senior Counsel has contended that by virtue of the fundamental rights guaranteed under Article 21 of the Constitution of India, the citizens of this Country are entitled to view the channel of their choice and having declined the permission to the company, the fundamental rights guaranteed to the citizens are also violated.

58. Therefore, according to the learned Senior Counsel Sri. Dushyanth Dave, the action of the Union Government in not renewing the permission for downlinking and uplinking already granted to M/s. Madhyamam Broadcasting Limited through 'Media One' TV is totally an arbitrary action. However, the learned Additional Solicitor General of India Sri. Aman Lekhi submitted that he is absolutely agreeable with the propositions of law laid down by the Apex Court in the judgments relied upon by the learned counsel for the appellants. But, fact remains, when the files disclose certain issues with respect to the security of the State, the Government is at liberty to decline to renew the permission granted, without disclosing the complete reasons for the non-renewal.

59. The learned Additional Solicitor General has also submitted, by virtue of clause 10.4 of the uplinking Guidelines, which is in *para materia* with clause 9.4 of the downlinking guidelines, that, at the time of considering the renewal of permission of the existing permit holders, the eligibility criteria of the network of the company and experience of the top management will not apply; however, other terms and conditions would be applicable considering the modified terms and conditions of the permission and the provisions of the extant laws.

60. Therefore, according to the learned Additional Solicitor General, at the time of renewal, the Union Government does not circumscribe itself absolutely into the conditions relating to the renewal of the existing permissions, rather it is vested with the powers to take into account the other aspects discussed above when it comes to security aspects.

61. We have evaluated the rival submissions made across the Bar. In our considered opinion, the principles of law laid down by the Apex Court in the afore-quoted judgments would make it clear that normally and ordinarily the Government cannot interfere or tinker with the freedom enjoyed by the Press, since the principles of democracy and rule of law prevailing in the country is largely dependent upon the freedom of speech enjoyed by the press and the citizens through the visual and print medias, which constitutes the largest network system to disseminate the news to the citizens of this country and also abroad.

62. It is also true that through the media and the press, citizens are able to understand the progress of the nation, nature and manner of functioning of the Government and also to evaluate those aspects to formulate their own ideas and policies, to respond, to deliberate and especially to form opinion exercise their franchise appropriately and fruitfully at the time of elections.

63. But, as we have pointed out above, even though too many details are not available in the files produced before us, we are of the view that there are certain aspects affecting the public order or the security of the State on the basis of the report of the Intelligence Bureau and other Investigating agencies. In that regard, our attention is drawn to paragraph 8 of the judgment in ***Romesh Thappar*** (supra), which reads thus:

8. "Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context. In the classification of offences in the Indian Penal Code, for instance, Chapter XIV enumerates the "offences affecting the public health, safety, convenience, decency, and, morals" and it apparently includes rash driving or riding on a public way (S.279) and rash navigation or a vessel (S. 280), among others, as offences against public safety, while Chapter VI lists waging war against the Queen (S. 121) sedition (S. 124-A) etc. as "offences against the State", because they are calculated to undermine or affect the security of the State, and Chapter VIII defines "offences against the public tranquillity" which include unlawful assembly (S.141) rioting (S.146), promoting enmity between classes (S.158-A), affray (S. 159) etc. Although in the context of a statute relating to law and order "securing public safety" may not include the securing of public health, it may well mean securing the public against rash driving on a public

way and the like, and not necessarily the security of the State. It was said that an enactment which provided for drastic remedies like preventive detention and ban on newspapers must be taken to relate to matters affecting the security of the State rather than trivial offences like rash driving or an affray. But whatever ends the impugned Act may have been intended to subserve, and whatever aims its framers may have had in view, its application and scope cannot, in the absence of limiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State. Nor is there any guarantee that those authorised to exercise the powers under the Act will in using them discriminate between those who act prejudicial to the security of the State and those who do not.”

64. Therefore, it can be seen that the Apex Court, while emphasizing the relevance and importance of the freedom of Press, makes it abundantly clear that the restrictions contained under Articles 19(3) and (4) of Constitution of India dealing with public order include the security of the State. In *Manohar Lal Sharma* (supra), at paragraph 49, it is stated that “It is a settled position of law that in matters pertaining to national security, the scope of judicial review is limited. However, this does not mean that the State gets a free pass every time the spectre of "national security" is raised.”. In Paragraph 50, it is further held that “Of course, the Respondent-Union of India may decline to provide information when constitutional considerations exist, such as those pertaining to the security of the State, or when there is a specific immunity under a specific statute.”

65. There also, it is stated in clear terms that it is incumbent on the State not only to specifically plead such constitutional concern or statutory immunity, but also to prove and justify the same in court on affidavit. As we have pointed out above, a statement is filed by the Union of India and the Secretary to Government, Ministry of Home Affairs before the learned single Judge, wherein at paragraphs 20-24 of the said statement, it is stated thus:

20. The MHA by OM dated 27.01.2016 denied the security clearance to both the proposals i.e. permission of additional TV channels namely. "Media One Life" and "Media One Global" and appointment of two Directors namely, Musliyarakath Mehaboob and Rahmathunnissa Abdul Razack of the company. Hence, the Ministry issued a Show Cause Notice dated 12.02.2016 to the company to clarify as to why the permission granted to the company should not be revoked.

21. The company submitted its reply wherein they mentioned that as the Show Cause Notice (SCN) was issued on the basis of denial of security clearance by MHA, however, they are unaware of the grounds of denial of security clearance since the same was never communicated to them nor they were a party in these proceedings. Due to denial of Security Clearance, the permission for uplinking and downlinking of TV Channel namely, "Media One Life granted by the Ministry's letter date 26.08.2015 was cancelled on 11.09.2019. The denial of the permission for appointment of the two director's was communicated to the company by the Ministry's letter dated 11.08.2017.

22. The above cancellation and denial for permission to appointment of Directors in the company has not been challenged by the company. The submission made before the Hon'ble court by the companies counsel is incorrect as the Government had not accepted the submission of the Company.

23. The petitioner argued that it had given a request to MHA for security clearance and the same is not replied so far. In this connection it is clarified that the applications for renewal is first examined in the Ministry of Information and Broadcasting and then Ministry sends the proposal to the MHA for security clearance. Thus, the contention of the petitioner that their request to MHA for security clearance is not replied is of no significance. MHA does not accept any direct communication from the companies.

24 The MHA has informed that denial of security clearance in the case on hand are based on intelligence inputs, which are sensitive and secret in nature, therefore, as a matter of policy and in the interest of national security, MHA does not disclose reasons for denial.”

66. The Act, 1995 was brought into force to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto. From the statement of objects and reasons, what we could gather is that there has been haphazard mushrooming of cable television networks all over the country during the last few years as a result of the availability of signals of foreign television networks via satellites; that it has been perceived as a "cultural invasion" in many quarters, since the programmes available on these satellite channels are predominantly western and totally alien to our culture and way of life; and that since there is no regulation of those cable television networks, lot of undesirable programmes and advertisements are becoming available to the viewers without any kind of censorship. Apart from the other aspects, the protection of interest of the viewers, cable operators, cable television networks etc. and their responsibilities and obligations in respect of the quality of service, technical as well as content-wise, use of material protected by copyright, exhibition of uncertified films, protection of subscribers from anti-national broadcasts from sources inimical to our national interest etc. were all consideration for introducing the legislation .

67. Therefore, the intention of the Act, 1995 is explicit from the objects and reasons and, in our view, significance shall be given to the interests of the nation and as such a purposive interpretation shall be given to the provisions of the extant laws.

68. Section 4 deals with the manner of registration and sub- Section (2) makes it clear that the cable operator shall fulfil such eligibility criteria and conditions as may be prescribed and different eligibility criteria may be prescribed for different categories of cable operators. Likewise, Sections 19 and 20 of Act 1995 enables the Union Government to do the required in order to protect the larger interest of the nation and the citizens, rather than protecting the interest of a telecasting company. This we say because, the eminent domain of the Government as regards national interest will always remain with the Government itself irrespective of the contents of the guidelines issued for the purpose to regulate and control the network operations of the registered establishments.

69. Therefore, we legally presume that in the impugned order, the expression 'revocation is used basically for the reason that normally and ordinarily, an operator who has received registration and permission for uplinking and downlinking news is entitled for automatic renewal; but, when there are other reasons adverse to the interests of the nation, the Government is vested with powers to revoke the same,

especially due to the fact that in spite of lapse of the permission during the month of September 2021, the company was permitted to operate the channel in question. This is a case where the show cause notice was issued to the appellant company, to which it submitted its objections. It was thereafter that the Ministry of Information and Broadcasting forwarded the same to the Ministry of Home Affairs for security clearance, which was declined, and therefore, it cannot be said that the renewal of the permission is an absolute right unmindful of other grievous situations, once the registration and permission is granted. The extant guidelines also demonstrate that in the matter of grant of permission and renewal for uplinking and downlinking , by the ministry of broadcasting, the Ministry of Home affairs is an inseparable link .

70. To put it otherwise, the security of the State and the public order are very vital for the fair and smooth functioning of the nation and therefore, significance and importance shall be provided to the interests of the citizens of this country, rather than other aspects.

71. Taking into account the above vital aspects, including the contents of the confidential files produced before us, we are of the view that the learned single Judge was right in declining interference with the order passed by the Union Government refusing renewal of uplinking and downlinking permission to M/s. Madhyamam Broadcasting Limited for telecast operations through 'Media One TV'".

To put it short, the appellants have failed to establish any jurisdictional error or other legal infirmities in the judgment of the learned single Judge warranting our interference in an intra court appeal, filed under Section 5 of the Kerala High Court Act, 1958. Needless to say, the appeal fails, accordingly it is dismissed.

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